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HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 3/2006

APPELLANTS Oriental Insurance Co. Ltd.

Versus

RESPONDENTS Mediami Mangdu and others

Judgment post for 17-7-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 3/2006

APPELLANTS INSURANCE	Oriental Insurance Co. Ltd. Main Road, Jagdalpur through Divisional Manager, Division Office, Opposite High Court, Bilaspur (C.G.)

Versus

RESPONDENTS CLAIMANT	1. Mediami Mangdu, S/o Kosa Gond, aged about 20 years, R/o village Mungapara, Korra, R/o Gadiras, Tehsil, Distt. Dantewara (C.G.)
DRIVER	2. Chandra Bose, S/o Balsingh Mahara, aged 19 years, R/o village- Korra, P.S. Gadiras, District- Dantewara (CG)
OWNER	3. N.L. Bindra, S/o Jodhraj Bindra, aged 60 years, R/o Patanampara, Sukma, Distt. Dantewara (C.G.)

Shri Abhisek Singh with Shri Ghanshyam Patel, counsel for the appellant.
None appears for the respondents.

J U D G M E N T

Dhirendra Mishra, J.

The appellant – insurer has preferred this appeal against the award dated 5th October, 2005 passed by learned Additional Motor Accident Claims Tribunal, South Bastar, Dantewara in Claim Case No. 44/2005 whereby the appellant and respondents No. 2 and 3 are jointly and severely held liable for satisfying the award of Rs. 1,90,000/- with interest at the rate of 7.5% from 24-12-2003 passed in favour of the respondent No. 1- Claimant.

2. Brief facts leading to the filing of the claim petition are that on 29-6-2003, claimant was returning to his village on a bicycle when Jeep No. CG 18/T.0118 owned by respondent No. 3, driven by respondent No. 2 and insured by appellant dashed his bicycle from behind resulting in grievous injuries over left

leg, left and right shoulder of the claimant and be became permanently disabled.

The owner and the driver in their joint written statement denied the averments of the claim petition and in alternative pleaded that the vehicle was insured by the appellant for the relevant period and compensation, if any, shall be payable by the appellant-insurer.

The appellant-insurer took specific defence that at the time of accident, the driver of the Jeep - respondent No. 2 did not have valid and effective driving licence, the vehicle was being driven in breach of policy condition and, therefore, the appellant may not be held liable for any compensation.

The Tribunal passed the impugned award with a finding that the accident occurred due to rash and negligent driving by the respondent No. 2 as a result of which, the claimant sustained grievous injuries and became disabled and the vehicle was not being driven in the breach of policy condition and the insurance company is also liable to satisfy the award.

Learned counsel for the appellant submitted that though the driver and the owner in para 8 of their joint reply have averred that the respondent No. 2 was having valid and effective driving licence and the vehicle was being plied in accordance with the conditions of the permit, but no evidence was adduced in this regard and even the insurance policy was not produced. The claimants have filed the charge sheet, the F.I.R. and other documents of the criminal case against respondent No. 2 and proved the same and from perusal of the charge sheet, it would be evident that the respondent No. 2 was prosecuted for the above offence under Sections 279, 337 and 338 and also under Sections 3 read with Section 181 of the Motor Vehicles Act, 1988 as the respondent No. 2 did not possess valid and effective driving licence on the date of accident. It is further contended that the appellant had filed an application on 26-9-2005 before

the Tribunal under Order 11 Rule 14 of the Code of Civil Procedure praying for a direction to the respondents No. 2 and 3 to produce original driving licence of respondent No. 2. The non-applicant did not file reply to this applicant, however the application was disposed of by the Tribunal with an observation that no direction, as prayed for, is necessary as it is the responsibility of the parties to file documents in their possession. He further submitted that the appellant examined Shailendra Kumar, Branch Manager as their witness who has categorically stated that the driver of the vehicle did not have valid and effective driving licence at the time of accident, and therefore, the insurer was not liable for satisfying the award, however in the cross-examination, no suggestion was given on behalf of the driver and the owner of the vehicle that the driver possessed valid and effective driving licence. However, the objection of the appellant in this regard has been rejected by the Tribunal with an observation that the onus to establish that the driver did not possess valid driving licence is on the Insurance Company and the Insurance Company has not discharged this onus by examining any employee of the Regional Transport Office to establish that the driver did not have driving licence. Reliance is placed on the decision in the matter of **National Insurance Co. Ltd. –v- Swaran Singh and others** reported **(2004) 3 SCC 297**.

The respondents were duly served. The respondents No. 1 and 3 were represented however, none appears for the respondents when the matter was called out.

I have heard learned counsel for the appellant.

The only ground urged by the appellant is that the driver of the offending vehicle – respondent No.2 did not have valid and effective driving licence at the time of accident. This negative onus has been discharged by the Insurance Company as the appellant has pleaded in its reply that the driver has no

valid and effective licence. The documents filed by the claimant being the charge sheet, seizure memo and other documents of the criminal case against the respondent No. 2 categorically show that the respondents did not produce the licence during investigation and, therefore, apart from other offences, respondent No. 2 was also prosecuted for offence under Section 3 read with Section 181 of the Motor Vehicles Act, 1988 i.e. driving the vehicle without having valid and effective driving licence. He also moved an application before the Tribunal for a direction to the owner and driver to produce the original driving licence. They did not file reply to this application and also did not produce the licence after filing of this application. However this application was rejected by the Tribunal with an observation that it is for the parties to file documents in support of their pleas. It was also pointed out that the witness examined on behalf of the insurer has stated on oath that the respondent No. 2 did not have valid and effective driving licence. He was cross-examined by respondents No. 2 and 3, however, no suggestion was given to this witness that the driver was having licence.

Under these circumstances, the insurer has discharged the primary onus on it that the driver of the offending vehicle did not have valid and effective driving licence. In the case of **Swaran Singh** (supra), in paragraphs 69 and 70, it has been held that :-

> *"69. The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability.*

70. Apart from the above, we do not intend to lay down anything further i.e. degree of proof which would satisfy the aforementioned requirement inasmuch as the same would indisputably depend upon the facts and circumstances of the each case. It will also depend upon the terms of contract of contract of insurance. Each case may pose a different problem which must be resolved having regard to a large number of factors governing the case including conduct of parties as regards duty to inform, correct disclosure, suppression, fraud on the insurer etc. It will also depend upon the fact as to who is the owner of the vehicle and the circumstances in which the vehicle was being driven by a person having no valid and effective licence. No hard-and-fast rule can, therefore, be laid down. If in a given case there exists sufficient material to draw an adverse inference against either the insurer or the insured, the Tribunal may do so. The parties alleging breach must be held to have succeeded in establishing the breach of conditions of the contract of insurance, on the part of the insurer by discharging its burden of proof. The Tribunal, there cannot be any doubt, must arrive at a finding on the basis of the material available on records."

If we examine the evidence available on record in the light of paragraphs 69 and 70 of the above judgment reproduced hereinabove, we have no hesitation in our mind that the appellant insurer has discharged its primary onus to establish that the driver of the vehicle – respondent No. 2 did not have valid and effective driving licence. The appellant has categorically pleaded that the driver did not have valid and effective driving licence and unsuccessfully attempted to seek a direction from the Tribunal to the respondent No. 2 and 3 to produce the original driving licence, however no licence was produced by respondents No. 2 and 3 and even though the

respondent No. 2 and 3 were contesting the claim case before the Tribunal through their Advocates. No evidence was led by the respondents to establish that they were having valid and effective driving licence. The appellant also paid process fee for calling the respondents No. 2 and 3 to be examined as their witnesses and accordingly summons were issued to the respondent No. 2 on 9-8-2005 and 12-9-2005, however they did not turn up to depose before the Tribunal. Even after the efforts made by the appellant, the respondents did not either produce the driving licence or entered into the witness box. The driver was prosecuted under Section 3 read with Section 181 of the Motor Vehicle Act, 1988 for driving the vehicle without having valid and effective driving licence. Therefore, the only irresistible presumption can be drawn that the driver did not have valid and effective driving licence. In these circumstances, looking to the conduct of respondents No.2 and 3, adverse inference can be drawn that they did not have valid and effective driving licence and as such, the insurer has succeeded in establishing the breach of policy condition on the part of the insured while discharging its burden of proof.

Thus on the basis of the material available on record, we are of the considered opinion that adverse inference against the insured can be drawn that he entrusted the vehicle to the respondent No. 2 who did not possess valid and effective driving licence at the time of accident and the insured has succeeded in establishing the breach of condition of insurance policy.

In para 84 of **Swaran Singh's** case (supra), it has been held that the motor vehicle must be driven by a person having valid and effective driving licence and the owner of the motor vehicle in terms of Section 5 has a responsibility to see that no vehicle is driven except by a person who does satisfy the provisions of Section 3 or 4 of the Act and where the driver of the vehicle did not have valid and effective driving licence and

the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability.

In the result, the appeal preferred by the appellant Insurance Company is allowed and it is held that the appellant/insurer is not liable to make payment of compensation and it was the owner who has to make the payment of awarded amount. However, it is directed that the appellant/insurer shall pay the quantum of compensation fixed by the Tribunal to the respondent No.1/claimant within two months from today. For the purpose of recovering the same from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

No orders as to costs.

Sd/-
Dhirendra Mishra
Judge